

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ISAIAH LYNDELL CAPITOL,)	
)	
Petitioner,)	Case No. 1:09-cv-16-SJM-SPB
)	
v.)	
)	
JOSEPH P. NISH, <i>et al.</i> ,)	
)	
Respondents.)	

MEMORANDUM ORDER

The instant petition for writ of habeas corpus was received by the Clerk of Court on January 27, 2009 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Report and Recommendation, filed on August 25, 2011 [22], recommends that the instant petition for writ of habeas corpus be denied and that a certificate of appealability also be denied. The parties were allowed fourteen (14) days from the date of service in which to file objections. Service was made on Petitioner by certified mail at SCI-Fayette, where he is currently incarcerated, and on the Respondents. Petitioner did not submit objections to the R&R, but on October 3, 2011 he filed a document styled "Motion for Judgement [sic] of New Trial" [23]. This motion was denied by the Magistrate Judge on October 7, 2011 as an "improper and untimely attempt to amend his petition for a writ of habeas corpus and add a new claim." (Text Order dated 10/7/11.)

After de novo review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 12th Day of October, 2011;

IT IS ORDERED that the instant petition for writ of habeas corpus be, and hereby is, DENIED. Inasmuch as reasonable jurists would not find it debatable whether Petitioner's claims fail to make a substantial showing of the denial of a constitutional right and/or are procedurally defaulted, IT IS FURTHER ORDERED that no certificate of appealability shall issue.

The Report and Recommendation of Magistrate Judge Baxter, filed on August 25, 2011 [22], is adopted as the opinion of the Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

Cm: All parties of record.

U.S. Magistrate Judge Susan Paradise Baxter